

Docket No.: 1560-0362P
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Kazuo HIGASHI et al.

Application No.: 09/912,376

Confirmation No.: 5053

Filed: July 26, 2001

Art Unit: 3623

For: REMUNERATION CALCULATING
METHOD, REMUNERATION
CALCULATING APPARATUS, AND
COMPUTER MEMORY PRODUCT

Examiner: B. Van Doren

AMENDMENT IN RESPONSE TO NON-FINAL OFFICE ACTION

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTORY COMMENTS

In response to the Office Action dated October 3, 2005, please amend the above-identified U.S. patent application as follows:

Amendments to the Abstract begin on page 2 of this paper.

Amendments to the Claims are reflected in the listing of claims which begins on page 14 of this paper.

Remarks/Arguments begin on page 15 of this paper.

AMENDMENTS TO THE ABSTRACT

Please substitute the following paragraph(s) for the abstract now appearing in the currently filed specification:

Work is divided into job units, a base appraisal point is set for each job unit, whole or some amount of the base appraisal point is given as an appraisal point to a worker 200 according to the accomplishment status of the job unit, the appraisal point is not simply converted to remuneration, remuneration is determined based on a monetary value resulting from conversion of the appraisal point by multiplication of the appraisal point by a conversion rate determined according to the operating performance of an enterprise entity 100, and a profit and loss statement and a balance sheet of the worker 200 to the enterprise entity 100 are created. A remuneration calculating method, a remuneration calculating apparatus and a computer memory product are provided, which can calculate remuneration of workers who have made a labor agreement with an enterprise entity by a result-oriented system while reflecting the operating performance of the enterprise entity, limiting an extreme increase and decrease of remuneration and enabling the workers to grasp their own labor value.

AMENDMENTS TO THE CLAIMS

1. (Currently Amended) A remuneration calculating method for calculating remuneration of workers who have made a labor agreement with an enterprise entity, comprising the steps of:

dividing work into job units to be executed by one or a plurality of persons;
setting a base appraisal point for quantitatively appraising each of the job units;
giving each worker an appraisal point which represents whole or some amount of a base appraisal point set for each job unit, according to an accomplished ratio accomplishment status of the job unit (S602);
determining a conversion rate for converting an appraisal point to a monetary value; and
calculating remuneration of each worker by converting an appraisal point given to the worker based on the conversion rate.

2. (Original) The remuneration calculating method as set forth in Claim 1, further comprising the step of accepting input of the job unit and base appraisal point which were proposed by the worker and approved by an approver appointed beforehand.

3. (Original) The remuneration calculating method as set forth in Claim 1, further comprising the step of accepting input of the base appraisal point which was set based on a present operation value representing an operation value at present and/or expenses needed for the operation.

4. (Original) The remuneration calculating method as set forth in Claim 1, further comprising the step of assuming an operation value at a specific time point in the future as a future operation value, converting the assumed future operation value to a present operation value representing an operation value at present, and accepting input of the base appraisal point which was set based on the present operation value.

5. (Currently Amended) The remuneration calculating method as set forth in Claim 1, further comprising the steps of:

calculating an interim remuneration from the conversion rate and appraisal point;
comparing the calculated interim remuneration and a first predetermined value;
~~deducting~~ determining a monetary value for adjustment which has been prepared, if the calculated interim remuneration is lower than the first predetermined value;

calculating remuneration of the worker by adding the ~~deducted~~ determined monetary value to the interim remuneration;

comparing the calculated interim remuneration and a second predetermined value which is not lower than the first predetermined value;

increasing the monetary value for adjustment, if the calculated interim remuneration is higher than the second predetermined value; and

calculating remuneration of the worker by deducting the increased value from the interim remuneration.

6. (Original) The remuneration calculating method as set forth in Claim 5, further comprising the steps of:

calculating a debt-credit relationship between the enterprise entity and the worker; and

creating a balance sheet of the worker to the enterprise entity after adjusting the calculated debt-credit relationship by using the monetary value for adjustment.

7. (Original) The remuneration calculating method as set forth in Claim 1, further comprising the steps of:

calculating expenses including remuneration of the worker, which were needed for accomplishing the job unit;

calculating a monetary value of the accomplished job unit; and

creating a profit and loss statement of the worker to the enterprise entity for a predetermined term, based on the calculated expenses and monetary value.

8. (Original) The remuneration calculating method as set forth in Claim 7, further comprising the step of accepting input of the base appraisal point which was set based on a present operation value representing an operation value at present and/or expenses needed for the operation.

9. (Original) The remuneration calculating method as set forth in Claim 7, further comprising the step of assuming an operation value at a specific time point in the future as a future operation value, converting the assumed future operation value to a present operation value representing an operation value at present, and accepting input of the base appraisal point which was set based on the present operation value.

10. (Currently Amended) The remuneration calculating method as set forth in Claim 7, further comprising the steps of:

calculating an interim remuneration from the conversion rate and appraisal point; comparing the calculated interim remuneration and a first predetermined value; deducting determining a monetary value for adjustment which has been prepared, if the calculated interim remuneration is lower than the first predetermined value;

calculating remuneration of the worker by adding the deducted determined monetary value to the interim remuneration;

comparing the calculated interim remuneration and a second predetermined value which is not lower than the first predetermined value;

increasing the monetary value for adjustment, if the calculated interim remuneration is higher than the second predetermined value; and

calculating remuneration of the worker by deducting the increased value from the interim remuneration.

11. (Original) The remuneration calculating method as set forth in Claim 10, further comprising the steps of:

calculating a debt-credit relationship between the enterprise entity and the worker; and

creating a balance sheet of the worker to the enterprise entity after adjusting the calculated debt-credit relationship by using the monetary value for adjustment.

12. (Original) The remuneration calculating method as set forth in Claim 7, further comprising the step of accepting input of the job unit and base appraisal point which were proposed by the worker and approved by an approver appointed beforehand.

13. (Original) The remuneration calculating method as set forth in Claim 12, further comprising the step of accepting input of the base appraisal point which was set based on a present operation value representing an operation value at present and/or expenses needed for the operation.

14. (Original) The remuneration calculating method as set forth in Claim 12, further comprising the step of assuming an operation value at a specific time point in the future as a future operation value, converting the assumed future operation value to a present operation value representing an operation value at present, and accepting input of the base appraisal point which was set based on the present operation value.

15. (Currently Amended) The remuneration calculating method as set forth in Claim 12, further comprising the steps of:

calculating an interim remuneration from the conversion rate and appraisal point; comparing the calculated interim remuneration and a first predetermined value; ~~deducting determining~~ a monetary value for adjustment which has been prepared, if the calculated interim remuneration is lower than the first predetermined value;

calculating remuneration of the worker by adding the ~~deducted~~ determined monetary value to the interim remuneration;

comparing the calculated interim remuneration and a second predetermined value which is not lower than the first predetermined value;

increasing the monetary value for adjustment, if the calculated interim remuneration is higher than the second predetermined value; and

calculating remuneration of the worker by deducting the increased value from the interim remuneration.

16. (Original) The remuneration calculating method as set forth in Claim 15, further comprising the steps of:

calculating a debt-credit relationship between the enterprise entity and the worker; and

creating a balance sheet of the worker to the enterprise entity after adjusting the calculated debt-credit relationship by using the monetary value for adjustment.

17. (Currently amended) A remuneration calculating apparatus for calculating remuneration of workers who have made a labor agreement with an enterprise entity, comprising:

means for accessing a work database in which information about work is recorded in conjunction with an appraisal point indicating an appraised value of work;

means for accessing an operating-performance database in which information about operating performance of the enterprise entity is recorded in conjunction with a conversion rate for converting an appraised point to a monetary value;

means for accepting input of a job unit given by dividing work, a base appraisal point set for the job unit, and worker's information indicating a worker assigned the job unit;

means for recording the accepted job unit, base appraisal point and worker's information in conjunction with each other in said work database;

means for accepting input of an accomplishment status value indicating an ~~accomplishment status~~ accomplished ratio of the job unit;

means for calculating an appraisal point based on the accepted accomplishment status value and base appraisal point;

means for recording the calculated appraisal point in conjunction with the worker's information in said work database;

means for determining a conversion rate based on the information recorded in said operating-performance database; and
calculating means for calculating remuneration of the worker based on the conversion rate and appraisal point.

18. (Original) The remuneration calculating apparatus as set forth in Claim 17, further comprising:

means for accepting input of a future operation value representing an operation value at a specific time point in the future;
means for converting the accepted future operation value to a present operation value representing an operation value at present; and
means for setting a base appraisal point based on the present operation value.

19. (Original) The remuneration calculating apparatus as set forth in of Claim 17, further comprising:

means for accessing a debt and credit database in which a debt-credit relationship between the enterprise entity and the worker, including a monetary value for adjustment for adjusting remuneration, is recorded;
means for calculating an interim remuneration from the conversion rate and appraisal point;

means for deducting the monetary value for adjustment recorded in said debt and credit database, if the interim remuneration is lower than a first predetermined value; and

means for increasing the monetary value for adjustment recorded in said debt and credit database, if the interim remuneration is higher than a second predetermined value which is not lower than the first predetermined value,

wherein, when the monetary value for adjustment was deducted, said calculating means calculates remuneration of the worker by adding a deducted value to the interim remuneration, and, when the monetary value for adjustment was increased, said calculating means calculates remuneration of the worker by deducting an increased value from the interim remuneration.

20. (Original) The remuneration calculating apparatus as set forth in Claim 19, further comprising means for creating a balance sheet of the worker to the enterprise entity, after adjusting the debt-credit relationship recorded in said debt and credit database by using the monetary value for adjustment.

21. (Original) The remuneration calculating apparatus as set forth in Claim 17, further comprising:

means for calculating expense information indicating expenses needed for accomplishing the job unit;

means for calculating a monetary value resulting from accomplishment of the job unit; and

means for creating a profit and loss statement of the worker to the enterprise entity based on the calculated expense information and monetary value.

22. (Original) The remuneration calculating apparatus as set forth in Claim 21, further comprising:

means for accepting input of a future operation value representing an operation value at a specific time point in the future;

means for converting the accepted future operation value to a present operation value representing an operation value at present; and

means for setting a base appraisal point based on the present operation value.

23. (Original) The remuneration calculating apparatus as set forth in Claim 21, further comprising:

means for accessing a debt and credit database in which a debt-credit relationship between the enterprise entity and the worker, including a monetary value for adjustment for adjusting remuneration, is recorded;

means for calculating an interim remuneration from the conversion rate and appraisal point;

means for deducting the monetary value for adjustment recorded in said debt and credit database, if the interim remuneration is lower than a first predetermined value; and

means for increasing the monetary value for adjustment recorded in said debt and credit database, if the interim remuneration is higher than a second predetermined value which is not lower than the first predetermined value,

wherein, when the monetary value for adjustment was deducted, said calculating means calculates remuneration of the worker by adding a deducted value to the interim remuneration, and, when the monetary value for adjustment was increased, said calculating means calculates remuneration of the worker by deducting an increased value from the interim remuneration.

24. (Original) The remuneration calculating apparatus as set forth in Claim 23, further comprising means for creating a balance sheet of the worker to the enterprise entity, after adjusting the debt-credit relationship recorded in said debt and credit database by using the monetary value for adjustment.

25. (Original) A computer-readable computer memory product on which a program for causing a computer to calculate remuneration of workers who have made a labor agreement with an enterprise entity, including:

program code means for causing a computer to accept input of a job unit given by dividing work, a base appraisal point set for the job unit, and worker's information indicating a worker assigned the job unit;

program code means for causing a computer to record the accepted job unit, base appraisal point and worker's information in conjunction with each other;

program code means for causing a computer to accept input of an accomplishment status value indicating an accomplishment status of the job unit;

program code means for causing a computer to calculate an appraisal point indicating an appraised value of work based on the accepted accomplishment status value and base appraisal point;

program code means for causing a computer to determine a conversion rate for converting the appraisal point to a monetary value; and

program code means for causing a computer to calculate remuneration of the worker based on the conversion rate and appraisal point.

REMARKS

Claims 1-25 are currently pending, wherein claims 1, 5, 10, 15 and 17 have been amended to correct typographical and/or translation errors. Applicants respectfully request favorable reconsideration in view of the remarks presented herein below.

At the outset, Applicants note that the Examiner has not acknowledged the information disclosure statement filed on June 23, 2003. Accordingly, Applicants respectfully request that the Examiner consider the references cited in the June 23, 2003 IDS and provide Applicants with an initialed copy of the PTO-1449 form.

In paragraph 2 of the Office Action ("Action"), the Examiner requests that the reference numerals be removed from the abstract. To support this request, the Examiner points to MPEP §608.01(b) and states that "the abstract should be directed to the entire disclosure."

Applicants are unaware of any prohibition in MPEP §608.01(b) against the use of reference numerals in the abstract. Furthermore, Applicants point out that the abstract without amendment is directed to the entire disclosure. Accordingly, Applicants believe that the Examiner's request is unfounded. Never the less, in order to expedite prosecution of the present application, Applicants hereby amend the abstract to remove the reference numerals.

In paragraph 3 of the Action, the Examiner objects to claim 1 because it contains a reference to the drawings. Furthermore, the Examiner requests that the reference "(S602)" be removed from the claim to avoid undue confusion since it has no effect on the scope of the claims. Although Applicants do not believe that the reference causes

any confusion, in order to expedite prosecution of the present application, Applicants hereby amend claim 1 to remove the reference numeral as requested by the Examiner.

In paragraph 5 of the Action, the Examiner rejects claims 5, 10, and 15 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. More specifically, the Examiner asserts that the phrase “deducting a monetary value for adjustment” is vague and indefinite because it is unclear how this limitation is interrelated with the other limitations recited in claims.

Applicants note that it appears that the Examiner is interpreting the word “deducting” to mean taking away and or subtracting. However, deducting may also refer to the act of deduction (i.e., inferring or determining). When the claims are interpreted in this manner, the limitation is not vague or indefinite. Never the less, in order to expedite prosecution of the present application, Applicants have amended claim 5 to replace the term “deducting” with the term “determining”, thereby addressing the Examiner’s concerns.

In paragraph 8 of the Action, the Examiner rejects claims 1-16 and 25 under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

In rejecting claims 1-16 and 25, the Examiner asserts that the basis of the rejection is set forth in a two-prong test of: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible results. Furthermore, the Examiner asserts that “[s]ince the claims 1-16 and 25

are not within the technological arts...claims 1-16 and 25 are deemed to be directed towards non-statutory subject matter.

This rejection is improper in view of the Board's holding in *Ex Parte Lundgren*, BPAI, No. 2003-2088, September 28, 2005 (per curiam). The Board of Patent Appeals and Interferences has held that there is no separate "technological arts" test for statutory subject matter. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-16 and 25.

In paragraph 10 of the Action, the Examiner rejects claims 1-3, 5-8, 10-13, 15-17, 19-21 and 23-25 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,347,306 to Swart ("Swart"). Applicants respectfully traverse this rejection.

In order to support a rejection under 35 U.S.C. §102, the cited reference must teach each and every claimed element. In the present case, claims 1-3, 5-8, 10-13, 15-17, 19-21 and 23-25 are not anticipated by Swart because Swart fails to disclose each and every claimed element.

Independent claim 1 defines a remuneration calculating method for calculating remuneration of workers who have made a labor agreement with an enterprise entity. The method includes, *inter alia*, dividing work into job units to be executed by one or a plurality of persons; setting a base appraisal point for quantitatively appraising each of the job units; giving each worker an appraisal point which represents whole or some amount of a base appraisal point set for each job unit, according to an accomplished ratio of the job unit; determining a conversion rate for converting an appraisal point to a

monetary value; and calculating remuneration of each worker by converting an appraisal point given to the worker based on the conversion rate.

Swart discloses a method and system for automatically paying employees net pay immediately upon completion of a work segment. The system of Swart determines gross work segment pay based on the shift completion information and the employee's payment rate for the shift. However, Swart fails to disclose a remuneration calculating method as defined by claim 1.

Nowhere in Swart is there any disclosure of dividing work into job units to be executed by one or a plurality of people; setting a base appraisal point for quantitatively appraising each of the job units; giving each worker an appraisal point which represents the whole or some amount of a base appraisal point set for each job unit, according to an accomplished ratio of the job unit; or determining a conversion rate for converting an appraisal point to a monetary value.

In rejecting claim 1, the Examiner asserts that the Swart discloses a remuneration calculating method as claimed in as much as Swart discloses calculating net pay for employees based on shift information. More specifically, the Examiner asserts that the shifts of Swart are equivalent to the claimed job units, that the claimed base appraisal rate is equivalent to the hours in a shift, and that an employee's pay rate is equivalent to the claimed conversion rate. These assertions are unfounded for the following reasons.

First, the mere fact that shifts are generally defined by a predetermined number of hours is not equivalent to dividing work into job units to be executed by one or a

plurality of persons. Shifts are a means of dividing the time required to complete a job into segments, it is not equivalent to dividing the work to be done into job units as claimed. Furthermore, the mere fact that shifts are generally defined in terms of a predetermined number of hours is not equivalent to setting a base appraisal point for quantitatively appraising a job unit as defined by the present invention. The number of hours in a shift merely define the length of a shift and do not provide a base appraisal point for appraising a job unit as claimed.

Finally, even if the number of hours were equivalent to the claimed base appraisal point, nowhere in Swart is there any disclosure of giving each worker an appraisal point which represents the whole or some amount of a base appraisal point set for each job unit, according to an accomplished ratio of the job unit and determining a conversion rate for converting the appraisal point to a monetary value.

To the contrary, Swart only discloses storing an employee's pay rate, and converting the employee's worked hours into net pay. The pay rate of Swart is based on each employee and not an evaluation of each job unit as claimed. Accordingly, claim 1 is not anticipated by Swart because Swart fails to disclose each and every claimed element.

Independent claim 17 defines an remuneration apparatus for calculating remuneration of workers who have made a labor agreement with an enterprise entity. The apparatus includes means for carrying out the method of claim 1. Likewise, independent claim 25 defines a computer program product for carrying out the method of claim 1. Therefore, claims 17 and 25 are patentable over Swart for at least those

reasons presented above with respect to claim 1. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-3, 5-8, 10-13, 15-17, 19-21 and 23-25 under 35 U.S.C. §102(e).

In paragraph 21 of the Action, the Examiner rejects claims 4, 9, 14, 18, and 22 under 35 U.S.C. §103(a) as allegedly being unpatentable over Swart in view of U.S. Patent No. 6,662,164 to Koppelman et al. ("Koppelman"). Applicants respectfully traverse this rejection.

In order to support a rejection under 35 U.S.C. §103, the Examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness three criteria must be met. First, there must be some motivation to combine the cited references. Second, there must be a reasonable expectation of success. Finally, the combination must teach each and every claimed element. In the present case, claims 4, 9, 14, 18, and 22 are not rendered unpatentable by the combination of Swart and Koppelman because the Examiner fails to establish a *prima facie* case of obviousness as discussed below.

Claims 4, 9, 14, 18, and 22 variously depend from independent claims 1 and 17. Therefore, claims 4, 9, 14, 18, and 22 are patentable over Swart for at least those reasons presented above with respect to claims 1 and 17.

Koppelman discloses a method and apparatus for determining the commission to be paid to a sales representative or sales team. However, Koppelman fails to overcome the deficiencies of Swart.

Since Swart and Koppelman both fail to disclose or suggest a method and apparatus for calculating remuneration of workers who have made a labor agreement with an enterprise entity that includes giving each work an appraisal point which represents the whole or some amount of a base appraisal points set for each job unit, according to an accomplished ratio of the job unit and determining a conversion rate for converting an appraisal point to a monetary value as claimed, the combination of these two patents cannot possibly disclose or suggest said elements. Therefore, even if one skilled in the art were motivated to combine swart and Koppelman, which Applicants do not concede, the combination would still fail to render claims 4, 9, 14, 18, and 22 unpatentable because the combination fails to disclose each and every claimed element. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 4, 9, 14, 18, and 22 under 35 U.S.C. §103(a).

For all of the above stated reasons, the examiner is respectfully requested to reconsider and withdraw the rejection of all claims and allow these claims in view of the foregoing amendments and remarks.

If there are any issues outstanding in the present application, the examiner is requested to contact the undersigned to arrange an interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: January 3, 2006

Respectfully submitted,

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